

R652-21-100. Purpose and Authority

(1) Authority. These rules are promulgated pursuant to Utah Code §§ 65A-1-4, 65A-6-2, 65A-6-4, 65A-10-201, 65A-10-202, 65A-10-203, 65A-10-204, and 65A-10-205.

(2) Purpose. The purpose of this chapter of the division's rules is to implement regulations consistent with the purpose and intent of the legislature's amendments to Utah Code § 65A-6-4 regarding Great Salt Lake Elements and Minerals and the enactment of Utah Code § 65A-10-201 et seq. regarding the Division's management of Great Salt Lake.

R652-21-200. Definitions

(1) "Applicant" means any person submitting a Feasibility Application or Operations Application to the division.

(2) "Base Royalty Rate" means the royalty rate established, by the division, for a Great Salt Lake Element or Mineral before any Royalty Rate Reductions are applied.

(3) "Biota" means all plant, fungi, animal, and other bacteria and archaea in the Great Salt Lake ecosystem.

(4) "Bond" or "Bonding" means both full-cost bonding over sovereign lands, executed with the division, and reclamation bonding, executed with the Division of Oil, Gas & Mining.

(5) "Brine Depletion" means the volume of Brine Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Brine Water.

(6) "Brine Water" means water diverted from Great Salt Lake, including freshwater sources within Great Salt Lake.

(7) "Chemistry" means the properties, composition, and structure of the elements and compounds, and interactions thereof, making up the waters, brines, and substrate of Great Salt Lake.

(8) "Commercial Viability" means the Applicant:

(a) Provides proof of all pending or acquired water rights and related appropriations necessary for operations or a detailed plan demonstrating how the applicant will acquire water rights necessary for operations once in receipt of an Operations Royalty Agreement;

(b) Provides the requisite information to substantiate the efficacy and longevity of the technology selected for operations;

(c) Provides the requisite information to substantiate an operation with a Life of Mine of at least twenty years;

- (d) Provides the requisite financial information to substantiate the Applicant is capable of fulfilling its royalty obligations for the proposed Life of Mine;
 - (e) Has obtained any easements, permits, approvals, agreements, or other documents required for the entirety of operations for the Life of Mine;
 - (f) Has the requisite Bonding in place for upland property and sovereign lands; and
 - (g) Demonstrates the ability to produce, at commercial scale, a First Marketable Product, as defined by these rules.
- (9) “Common Source of Supply” means the mineral estate contained within:
- (a) The entirety of Great Salt Lake within the Meander Line, and
 - (b) Any element, mineral, or ore producing hydrological connections to Great Salt Lake.
- (10) “Companion Element or Mineral” means a Great Salt Lake Element or Mineral that is attached, embedded to, or is a by-product of another Great Salt Lake Element or Mineral, except for those Great Salt Lake Elements or Minerals already being produced under a royalty agreement with the division.
- (11) “Cooperative Agreement” means an agreement between two or more Operators to collaborate on the extraction of Great Salt Lake Elements and Minerals and coordinate accordingly.
- (12) “Correlative Rights” means the opportunity of each Commercially Viable owner to extract a portion of a Common Source of Supply, subject to the state’s sovereign lands management responsibilities, to produce a just and equitable share of the Great Salt Lake Mineral Resource without the occurrence of Waste. For purposes of Great Salt Lake Element or Mineral leasing, the protection of Correlative Rights is inclusive of balancing the state’s interests in protecting the ecological integrity of Great Salt Lake, ensuring a healthy and sustainable salinity level within the Great Salt Lake, and protecting the Great Salt Lake’s Chemistry and Biota.
- (13) “Emergency Trigger” means the salinity levels of the Gilbert Bay of Great Salt Lake do not satisfy the ecological conditions required for healthy brine shrimp and brine fly reproduction.
- (14) “Emergent Technologies” means a new technology or a new use, modification, or improvement of an existing technology that has not been deployed as an extractive method for mineral recovery on Great Salt Lake prior to May 3, 2023. For purposes of this definition, “Emergent Technologies” is synonymous with “Innovative Technologies.”
- (15) “Evaporative Technologies” means a mineral operation that partially or wholly utilizes evaporative processes, not including naturally occurring evaporative processes, at any stage of the extractive process to develop or extract a Great Salt Lake Element or Mineral from the waters, brines, or substrates of Great Salt Lake.
- (16) “Externally Sourced Water” means water diverted from sources other than Great Salt Lake and used for processing and operations.

(17) “Feasibility Assessment” means the process, prior to execution of an Operations Royalty Agreement with the division, for determining whether a Great Salt Lake Operator can demonstrate Commercial Viability and the proposed operation will have no Negative Impacts to Great Salt Lake Biota and Chemistry.

(18) “Final Royalty Rate” means the royalty established in the Operations Royalty Agreement, by the division, after applying all relevant and proven Royalty Rate Reductions. The Final Royalty Rate shall be a Variable-Rate Royalty.

(19) “First Marketable Product” means the form of a Great Salt Lake Element or Mineral, as determined by the division, to which the Base Royalty Rate attaches.

(20) “Greater Benefit to the State” means maximizing the recovery of Great Salt Lake Elements or Minerals and minimizing the Negative Impacts to Great Salt Lake Natural Resources.

(21) “Great Salt Lake Element or Mineral” means, as defined in Utah Code § 65A-6-4, a rare earth element; a trace element or mineral; or a chemical compound that includes a rare earth element or trace element or mineral.

(22) “Great Salt Lake Mineral Resource” means any Great Salt Lake Element or Mineral, including any marketable Companion Element or Mineral, that can be produced in Paying Quantities.

(23) “Great Salt Lake Natural Resources” means the Biota, water resources and water quality, the fishery and recreational resources, the wetlands and wildlife resources, and any other naturally occurring resource on Great Salt Lake.

(24) “Great Salt Lake Operator” or “Operator” means a person or business entity, qualified to do business in the State of Utah, pursuing the extraction of Great Salt Lake Elements or Minerals.

(25) “Healthy Ecological Conditions” means salinity levels, measured according to the protocols adopted by the Salinity Advisory Committee, which satisfy healthy brine shrimp and brine fly reproduction.

(26) “Life of Mine” means the anticipated duration an Operator can produce a Great Salt Lake Element or Mineral in Paying Quantities.

(27) “Meander Line” means the surveyed meander line of Great Salt Lake unless otherwise established by court order or negotiated boundary settlement.

(28) “Mitigation Water” means the water diverted from sources other than Great Salt Lake and delivered to Great Salt Lake to compensate for Brine Depletion, pursuant to Utah Code § 65A-6-4. Mitigation Water shall not include wastewater reuse.

(29) “Negative Impact” means a substantive and material adverse impact or disturbance in the singular or cumulative instance, caused or created by one or more Operator, to the Biota or Chemistry of Great Salt Lake, as determined by the division.

- (30) “Non-Evaporative Technologies” means a mineral operation that in no way utilizes evaporative processes at any stage of the extractive process to develop or extract a Great Salt Lake Element or Mineral from the waters, brines, or substrates of Great Salt Lake.
- (31) “Operations Plan” means a plan meeting the requirements specified in R652-21-805(3).
- (32) “Operations Royalty Agreement” means the agreement entered into between an Operator and the division authorizing and governing the extraction of a Great Salt Lake Element or Mineral.
- (33) “Operational Waste” means garbage, refuse, sludge, including sludge or other discarded material, including solid, liquid, semi-solid, or contained gaseous material generated from the extraction or production of Great Salt Lake Elements or Minerals.
- (34) “Paying Quantities” means the revenue generated from the sale of the Great Salt Lake Element or Mineral being produced exceeds all costs associated with obtaining such Great Salt Lake Element or Mineral, inclusive of any royalty obligation, as defined in these rules.
- (35) “Returned Water” means any water discharged into Great Salt Lake from commercial operations.
- (36) “Royalty Rate Deduction” means the percent reductions, contained in R652-21-1104, which an Operator may apply to lower the Base Royalty Rate.
- (37) “Sale Price” means the market price to which any royalty attaches, at the point which any Great Salt Lake Element or Mineral is extracted and processed on Great Salt Lake, and is exclusive of any transportation, third-party processing, or otherwise external costs.
- (38) “Sampling Royalty Agreement” means a short-term agreement entered into between an Operator and the division, for the duration of the Feasibility Assessment, authorizing and governing the extraction of a fixed volume of Great Salt Lake water or brine for the express purpose modifying or enhancing project equipment design, evaluation, and calibration.
- (39) “Secondary Material” means discarded products, end-use products, or waste products produced from the evaporation and processing of Great Salt Lake brines. Products or waste containing Great Salt Lake Elements or Minerals which remain held in suspension or in evaporation ponds are not within the meaning of this definition.
- (40) “Secondary Recovery Process” means the process for recovering Great Salt Lake Elements or Minerals from Secondary Material.
- (41) “Self-Certification” means a representation by an Operator affirmatively stating the contents provided are correct, in compliance with the Unsworn Declaration Act, Utah Code § 78B-18a-101 et seq.
- (42) “Extraction Operation Coordinating Committee” means a committee designated to assist Operators in coordinating Multiple Mineral Development on Great Salt Lake. The Extraction Operation Coordinating Committee shall perform the functions of assisting the Operators in drafting and implementing a mitigation plan to resolve issues arising from Multiple Mineral

Development and acting as an initial dispute resolution panel for conflicts arising between Operators. Each Operator is entitled to representation on the Extraction Operation Coordinating Committee. In addition to any Operator representatives, the Extraction Operation Coordinating Committee shall be comprised of: a representative of the division; and any other representative the division deems necessary.

(43) “Total Water” means the sum of Externally Sourced Water and Brine Water.

(44) “Variable-Rate Royalty” means a royalty rate that adjusts depending on the value of the commodity being sold.

(45) “Waste” means: 1) the failure of an operation to provide the state with a full and fair return on each separately identified Great Salt Lake Element or Mineral; 2) an unnecessary depletion, diminishment, or reduction of the quantity or quality of Great Salt Lake Mineral Resources; and 3) imprudent and uneconomical operations. In each case, before declaring “Waste” conditions, the division shall afford an Operator with a commercially reasonable amount of time to commission and develop an extraction operation or process that does not result in Waste.

(46) “Water Depletion” means the volume of Total Water consumed through processing and operations, calculated by subtracting the volume of Returned Water from the volume of Brine Water.

(47) All other definitions in Utah Code §§ 65A-6-4 and 65A-10-201 are adopted by reference.

R652-21-300. Nomination Process.

(1) An existing or prospective Operator may, at any time, file a nomination for rulemaking with the division to establish a royalty rate and calculation methodology for any Great Salt Lake Element or Mineral that does not have an established royalty rate and calculation methodology.

(2) Upon such nomination, the division shall, by rule, establish a royalty rate and calculation methodology for the Great Salt Lake Element or Mineral nominated.

R652-21-400. Education and Research.

R652-21-401. Purpose. The division recognizes the need for further non-commercial research, development, and testing of the unique characteristics of Great Salt Lake brines. The purpose of these rules is to establish the parameters of when such activities may occur.

R652-21-402. Registration.

(1) To register for educational or research activities, a person or entity shall complete and submit a registration form, provided by the division, and submit a plan for legally obtaining brines.

(2) The registration form shall be submitted to the division's headquarter office, at 1594 West North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703 during office hours.

Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, shall be immediately stamped with the exact date of filing.

(3) All registration forms shall be accompanied with a non-refundable registration fee, to be determined by the division.

(4) Upon receipt of the registration form, the division will review the form for completeness. If the registration form is deemed complete, the division will acknowledge receipt and approval of requested registration by providing the person or entity a written correspondence to include a registration number, the date of registration expiration, and a copy of the processed registration form included as an attachment.

R652-21-403. Term. Registration shall be valid for one calendar year from the date a registration number is issued. A registrant must renew the registration with the division for any continuing activities by submitting a completed registration form to the division as specified in R652-21-402.

R562-21-404. Reservation of Economic Interest.

(1) The right of a person to engage in educational or research activities under this rule is subject to the division's reservation of any right the division may have to an economic benefit derived from, or intellectual property right developed from:

- (a) The act of educational or research activities;
- (b) A Great Salt Lake Element or Mineral; or
- (c) Information concerning a Great Salt Lake Element or Mineral's properties once removed from Great Salt Lake or any hydrological connection thereto.

(2) A person may not engage in education or research activities under this rule if the person, as part of the registration required under R652-21-402, does not agree in writing to negotiate in good faith with the division if the division asserts an economic interest described in R652-21-404.

(3) Registrants shall record GPS coordinates of the sites where samples are gathered and provide those coordinates to the division and include those coordinates in any publications resulting from the education or research activities.

R652-21-500. Secondary Recovery.

R652-21-501. Purpose. An Operator producing a Final Marketable Product from a Secondary Recovery Process may enter into a Secondary Recovery Royalty Agreement with the division for the processing and sale of Secondary Material in existence before the enactment of these rules. Any Secondary Material considered for secondary recovery may not be located on sovereign lands or within evaporation ponds associated with Great Salt Lake mineral extraction.

R652-21-502. Secondary Recovery Application.

- (1) Submission. An Operator shall submit a Secondary Recovery Application on the form provided by the division.
- (2) Discretion. The division has the discretion to approve, conditionally approve, deny, or deem incomplete any Feasibility Application.
- (3) Qualified Applicant. Applicants shall meet the minimum qualifications set forth in R652-3-300.
- (4) Pre-Filing Meeting. An Operator shall request a pre-filing meeting with the division at least thirty days prior to application for a Secondary Recovery Royalty Agreement. The division may jointly waive or shorten the requirement for a pre-filing meeting request.

R652-21-503. Secondary Recovery Royalty Agreement.

- (1) Before any sale occurs, an Operator shall Self-Certify and report the quantity, in existence before the enactment of these rules, of Secondary Material for which they intend to utilize Secondary Recovery processes.
- (2) A Feasibility Assessment is not required for a Secondary Recovery Royalty Agreement, so long as any industrial waste, by-products, or discharges associated with the processing are not released onto sovereign lands or other hydrologically connected resources.
- (3) An Operator shall enter into a Feasibility Assessment before continuing to extract or process, under a royalty agreement other than a Secondary Recovery Royalty Agreement, elements or minerals which would result in the creation of Secondary Material.
- (4) A Secondary Recovery Royalty Agreement shall terminate when the last Secondary Material is processed and sold or upon the initiation of recovery of a Great Salt Lake Element or Mineral using Evaporative or Non-Evaporative Technologies.
- (5) Any Great Salt Lake Element or Mineral extracted or evaporated after the enactment of these rules is not eligible for processing and sale under a Secondary Recovery Royalty Agreement. An Operator intending to process and sell any such Great Salt Lake Element or Mineral shall enter into a Feasibility Assessment and, thereafter, an Operations Royalty Agreement.

R652-21-600. Feasibility Assessment.

R652-21-601. Necessity. To be eligible for an Operations Royalty Agreement, an Operator shall first enter into a Feasibility Assessment.

R652-21-602. Purpose.

- (1) The purpose of such Feasibility Assessment is to:
 - (a) Inform the division's continuing assessment and determination of the Commercial Viability of a proposed project; and

(b) Inform the division of impacts the proposed project would have on the Biota and Chemistry of Great Salt Lake.

R652-21-603. Feasibility Application.

(1) Submission. An existing or prospective qualified applicant, as defined in R652-3-300, shall submit a Feasibility Application on the form provided by the division.

(2) Discretion. The division has the discretion to approve, conditionally approve, deny, or deem incomplete any Feasibility Application.

(3) Pre-Filing Meeting. An Operator shall request a pre-filing meeting with the division and with the Division of Water Quality at least thirty days prior to application for a Feasibility Assessment. The division and Division of Water Quality may jointly waive or shorten the requirement for a pre-filing meeting request.

(4) Required Showings. Additionally, before the division and an Operator may enter into a Sampling Royalty Agreement, such Operator shall submit the following information in its Feasibility Application to the division:

(a) All available evidence and supporting documentation establishing Commercial Viability for the Life of Mine;

(b) Self-certification and all available evidence and supporting documentation establishing the Operator's planned Feasibility Assessment operations will have no Negative Impact on the Biota and Chemistry of Great Salt Lake;

(c) Type(s) of technology to be employed;

(d) Anticipated surface use occupancy and ownership thereof, including a description of any infrastructure to be placed on Great Salt Lake sovereign land and upland development necessary for the Feasibility Assessment;

(e) Proof of Bonding for any disturbance to sovereign land and any disturbance to uplands utilized for operations;

(f) If applicable, a description of the Operator's plan for any necessary reclamation action in the Feasibility Assessment area following termination of the Feasibility Assessment;

(g) Copies of any easements, permits, approvals, agreements, or other documents which have been or will be submitted to other agencies for initiation of the Feasibility Assessment operations;

(h) A detailed description of any agreements, contracts, options, and other financial arrangements entered into by the Operator and a third-party relating to both the Feasibility Assessment and planned extraction operations;

(i) Information regarding the nature and status of any existing contractual disputes with the State, regulatory actions, or alleged noncompliance, including plans to resolve or remedy such disputes or alleged noncompliance;

(j) Proof of all pending or acquired water rights and related appropriations necessary to perform the Feasibility Assessment or a detailed plan demonstrating how the applicant will acquire water rights necessary to perform the Feasibility Assessment once in receipt of a Sampling Royalty Agreement;

(k) Self-Certification planned Feasibility Assessment operations will not violate Utah Code § 65A-6-1(3);

(l) A detailed description of the Operator's experience and knowledge predicated on the Operator's ability to commercially produce minerals from the brines of Great Salt Lake;

(m) A detailed description of the Operator's plan and operations for mineral extraction for the duration of the Feasibility Assessment;

(n) Identification of a Royalty Rate Deduction the Operator intends to pursue, if applicable;

(o) A detailed description of the Operator's plan for metering the amount of Returned Water and Mitigation Water delivered to Great Salt Lake under Operator's plan;

(p) A detailed description of the Operator's plan for the location, processing, and storage of minerals for the duration of the Feasibility Assessment;

(q) An assessment of whether the Operator's planned operations will create any Operational Waste and a plan for management of any such Operational Waste;

(r) An assessment of the operation's Life of Mine and estimated mineral production for the duration of the Feasibility Assessment;

(s) The projected operational recovery rate for the Great Salt Lake Element or Mineral;

(t) A plan for any necessary water mitigation, as required by law, for the duration of the Feasibility Assessment;

(u) A plan for testing, monitoring, and recording all hydrologic inputs and outputs, including the Chemistry thereof, for the duration of the Feasibility Assessment; and

(v) If Operator has an existing royalty agreement, it is within the division's discretion to require additional showings regarding the Operator's standing and compliance with any existing division obligations.

(5) Additional Required Information. At any point during review of a Feasibility Application, the division may request additional relevant information from the Applicant. To remain in consideration for a Sampling Royalty Agreement, the Applicant shall provide such information in a reasonable time, specified by the division.

(6) Application Processing. Within sixty days of receiving a Feasibility Application, the division shall notify the applicant in writing of the status of the Application. The division may:

(a) Approve the Feasibility Application as submitted;

- (b) Deny the Feasibility Application as submitted;
- (c) Approve the Feasibility Application, with conditions determined by the Division; or
- (d) Deem the Feasibility Application incomplete and provide the applicant with a list of missing information, at which point an applicant may re-submit.

(7) Identification of Operators. Upon submission of a Feasibility Application, any Operator wishing to enter into a Cooperative Agreement shall obtain a list from the division of all existing Operators and notify each existing Operator of its intention to enter into a Cooperative Agreement.

R652-21-604. Feasibility Assessment Term.

(1) Term Length. The Feasibility Assessment term shall be up to nine months, unless otherwise determined by the division.

(a) Extensions. Extensions may be granted by the Director upon good cause shown by the Operator. A Request for Extension shall be submitted to the division upon the form provided by the division at least one month prior to the expiration of the Feasibility Assessment term.

(b) Termination. The Feasibility Assessment shall terminate if:

(i) Nine months have passed without the Director's approval of an extension, whether or not a Royalty Agreement has been executed;

(ii) An Operations Royalty Agreement is executed before the Feasibility Assessment Term expires;

(iii) The Director finds there is not good cause shown to grant an extension to the Operator; or

(iv) The Director, in her or his sole discretion, finds the Feasibility Assessment has resulted in Negative Impacts to Great Salt Lake or there is no possibility of the operation substantiating Commercial Viability.

R652-21-605. Sampling Royalty Agreement.

(1) Requirement. Upon the division's approval of a Feasibility Application, the Operator shall obtain a Sampling Royalty Agreement from the division.

(2) Sampling Royalty Rate. Except for an agreement providing for a royalty rate for extraction of a Great Salt Lake Element or Mineral entered into prior to May 3, 2023, an Applicant shall pay a minimum royalty of \$5,000 per month.

(3) Sampling Royalty Agreement Duration. A Sampling Royalty Agreement shall terminate upon the occurrence of any event specified in R652-21-604(1)(b).

(4) Scope of Sampling Royalty Agreement. Any Great Salt Lake Element or Mineral extracted or produced under a Sampling Royalty Agreement shall be accounted for and not sold until execution of an Operations Royalty Agreement. Any Great Salt Lake Element or Mineral extracted or produced under a Sampling Royalty Agreement may be utilized by third parties for the purpose of testing and evaluation.

R652-21-606. Feasibility Assessment Reporting.

(1) Sampling and Testing Intervals. During the term of the Feasibility Assessment, an Operator shall perform the necessary sampling and testing on at least a monthly basis.

(2) Reporting Requirements and Intervals. During the term of the Feasibility Assessment, an Operator shall submit the following within thirty days of each fiscal quarter:

- (a) A Feasibility Report, as described in R652-21-606(3);
- (b) A Production Report; and
- (c) Any new evidence and supporting documentation, beyond submissions provided in the Feasibility Application, establishing Commercial Viability for the Life of Mine.

(3) Feasibility Report. During the term of the Feasibility Assessment, an Operator shall report the following information to the division:

- (a) Total Water use and depletion data based on data collected from water meters;
- (b) Volume of Mitigation Water delivered to Great Salt Lake;
- (c) Information supporting the Operator's ongoing ability to Self-Certify Feasibility Operations have no Negative Impact to Biota and Chemistry, including:
 - (i) Detailed information on the quantity of water withdrawn and depleted and on the timing of the withdrawal, as well as the point of withdrawal;
 - (ii) Detailed information on the sources, volume, and timing of discharges, as well as a characterization of the physical, chemical, biological, thermal, and other pertinent properties of the discharge; at a minimum: pH, total alkalinity, total dissolved solids, total suspended solids, sulfate, nitrate, nitrite, carbonate, bicarbonate, chloride, hydroxide, chemical oxygen demand, biological oxygen demand, silica, zinc, magnesium, sodium, calcium, potassium, boron, bromine, aluminum, iron, and silicon; range of temperatures expected in effluent; density range of effluent to be discharged; and quantity and identification of foreign materials discharged to Great Salt Lake;
 - (iii) Detailed information on the amount and Chemistry of all substances added to during processing, as applicable;
 - (iv) Information on Operational Waste, including Operational Waste production, composition, methods of Operational Waste material disposal, and the management, placement, and disposal of Operational Waste;

(v) Description of habitat and Biota in and around area of operation or discharge impacted, if at all; and

(d) Such other relevant information the division may require.

(4) Production Report. An Operator shall report the volume and weight of any Great Salt Lake Element or Mineral extracted or produced through the Feasibility Assessment.

(5) Required Sharing of Information. Upon request by the division, an Operator shall provide any additional relevant information to the division in a reasonable amount of time, as determined by the division.

(6) Records. An Operator with a Feasibility Royalty Agreement shall keep accurate records of the volume and weight of any Great Salt Lake Element or Mineral extracted. Such records shall be retained for at least five years and shall be available for inspection upon request by the division.

(7) Final Feasibility Report. Upon either the termination of a Feasibility Assessment or the filing of an Operations Application, whichever occurs first, an Operator shall file a Final Feasibility Report with the division. The Final Feasibility Report shall include:

(a) The Operator's quantitative and qualitative assessment of successes and limitations encountered by the Operator during the term of the Feasibility Assessment;

(b) The Operator's detailed plan for any necessary reclamation action following termination of the Feasibility Assessment;

(c) A description of the volume of Brine Water, Externally Sourced Water, Mitigation Water, and Brine Depletion from Great Salt Lake and other sources utilized during the Feasibility Assessment, including a description of whether that volume was delivered to Great Salt Lake, consumed, evaporated, or depleted;

(d) Proof the operator processed, at a minimum, 5 acre-feet of Brine Water during the Feasibility Assessment;

(e) A description of the total amount of Brine Water, Externally Sourced Water, Mitigation Water, and Brine Depletion anticipated for the planned operation;

(f) A good faith, non-binding assessment of the recoverable mineral resources for planned operations and a timeframe and development plan under which planned extraction will occur;

(g) A good faith, non-binding projection of the duration of potential extraction and the net revenue derived from such extraction;

(h) Any material changes to the Required Showings submitted in the Feasibility Application;

(i) A summary of findings establishing Operator's Feasibility Assessment had no Negative Impact on the Biota and Chemistry of Great Salt Lake; and

(j) Any additional relevant information requested by the division, provided the division gave sufficient advance notice of the need for such information.

R652-21-607. Cost Recovery. The Division, for the duration of the Feasibility Assessment, shall recover reasonable costs incurred for monitoring, inspections, and application processing through the Sampling Royalty Agreement with the Operator. The division may contract with a third party to independently verify any information submitted to the division.

R652-21-700. Multiple Operator and Multiple Mineral Development.

R652-21-701. Common Source of Supply Designation.

(1) Pursuant to the division's Great Salt Lake management authority, codified in Utah Code § 65A-10-203, and based on the numerous Great Salt Lake Elements or Minerals which can be extracted from Great Salt Lake's water or brine, the division designates the entire mineral estate held in suspension within the water and brines of Great Salt Lake, or any directly adjacent mineral producing hydrologically connection to Great Salt Lake, as a Common Source of Supply.

(2) As a Common Source of Supply, the division shall manage and plan for the overall development of Great Salt Lake's Mineral Resources in consideration of each Operator or separate operation on Great Salt Lake.

R652-21-702. Statement of Public Interest and Establishment of Multiple Mineral Development Principles.

(1) Pursuant to Utah Code § 65A-10-1 and as the executive management authority over the state's sovereign lands, the division declares it is in the public interest to foster, encourage, promote, and balance the responsible development, production, and utilization of Great Salt Lake Elements or Minerals in such a manner as to :

- (a) Prevent undue Waste from arising from concurrent extractive operations;
- (b) Ensure the greatest ultimate recovery of Great Salt Lake Elements or Minerals is obtained without unduly interfering with other concurrent extractive operations;
- (c) Establish the equal dignity of rights to the Common Source of Supply while protecting the Correlative Rights of all owners having rights to the Common Source of Supply and preserving the state's fiduciary obligation to manage all aspects of a public trust asset or resource; and
- (d) Encourage Emergent Technologies to protect Great Salt Lake's overall ecological integrity while simultaneously ensuring the greatest possible economic recovery for Great Salt Lake Operators and the State.

R652-21-703. Designation of Great Salt Lake as a Multiple Mineral Development Area.

(1) Pursuant to its management authority over sovereign lands and consistent with R652-20-2500, the division designates the entirety of Great Salt Lake below the Meander Line, including any mineral producing groundwater or geothermal hydrologic connections as a Multiple Mineral Development Area.

(2) Mineral operations conducted in areas designated by the division for multiple mineral development shall comply with all rules and regulations individual operations while also complying with all rules and regulations promulgated for Multiple Mineral Development Areas.

(3) In its sole and exclusive discretion, the division may determine certain areas within Great Salt Lake are withdrawn from mineral development or incapable of any mineral development.

(4) In order to fully protect Great Salt Lake Elements or Minerals and Great Salt Lake Natural Resources, the division may condition the issuance of any mineral lease or royalty agreement with stipulations tailored to protect: the interests of the state, the interests of existing mineral operations, and other Great Salt Lake Natural Resources.

R652-21-704. Cooperative Agreements and Mineral Lease and Royalty Agreement Integration.

(1) It is the policy of the division to promote the responsible and orderly development of Great Salt Lake Elements or Minerals. Consistent with that policy, and recognizing Great Salt Lake is a Common Source of Supply, Great Salt Lake Operators shall enter a “Cooperative Agreement” with each existing Operator conducting mineral extraction or mineral processing on Great Salt Lake.

(2) Entering into a Cooperative Agreement with all other Great Salt Lake Operators is a condition precedent to the division issuing an Operations Royalty Agreement and is a condition for continued operations.

(3) In addition to any other negotiated term or condition, each Cooperative Agreement executed by Great Salt Lake Operators shall clearly and conspicuously provide any rights, responsibilities, and obligations contained in the Cooperative Agreement are subject to the public trust as referenced in R652-2-200. Such Cooperative Agreement shall also define and address the following:

(a) The basis and overall agreement on how two or more operators on Great Salt Lake can conduct concurrent or simultaneous operations without unreasonably interfering with existing and separate operations while also preventing undue Waste;

(b) Recognition of other Operator’s vested mineral interests so that operations may be conducted in a manner that will result in the maximum ultimate recovery of Great Salt Lake Elements or Minerals with the minimum adverse effect on the ultimate maximum recovery of other minerals;

(c) The protection of Great Salt Lake Natural Resources, without unnecessary cost to the operations of another Operator, unless there is compensation for increased operational costs;

- (d) Terms and conditions for establishing a mitigation plan for when one Operator, either intentionally or unintentionally, interferes with or damages the mineral rights or mineral interests of another Operator;
- (e) The coordination and locations of access to the Common Source of Supply and the overall plan of operations, including assessment of costs resulting from concurrent operations, within the Multiple Mineral Development Area;
- (f) Mitigation of surface impacts including, but not limited to:
- (i) The location or relocation of any Great Salt Lake Element or Mineral extraction intake or discharge facility;
 - (ii) Phased or coordinated surface occupancy to allow each operator to access and develop its respective mineral estate or interest with the least disruption of operations and without damage to Great Salt Lake Elements or Minerals and Great Salt Lake Natural Resources either directly, indirectly, or through Waste; and
 - (iii) Limitation of Great Salt Lake Element or Mineral operations in areas where impacts to Correlative Rights or to Great Salt Lake Natural Resources are significant or most acute, as determined by the Operators or the division;
- (g) Terms and conditions for the establishment of an Extraction Operation Coordinating Committee for initially determining a mitigation plan that would limit unreasonable mineral estate interference, Waste, or Negative Impacts;
- (h) The scope and extent of how geological, engineering, production, and water use data is disclosed or exchanged, if necessary;
- (i) How any joint reclamation obligation or plan can be achieved or coordinated, if practical to do so;
- (j) Provisions on how shared Bonding obligations could be obtained and coordinated on any lands impacted, disturbed, or developed in relation to mineral extraction and processing activities;
- (k) Terms and conditions obligating Great Salt Lake Operators to plan, and carry out such plans, for the protection of the ecological integrity and healthy salinity levels of Great Salt Lake;
- (l) A schedule for how the Great Salt Lake Operators plan to collectively curtail production in the event of reaching the Emergency Trigger and a required curtailment of production; and
- (m) Any other term or condition outlining cooperative efforts consistent with Multiple Mineral Development under the rules, regulations, or plans of the division.

(4) The Director shall review each Cooperative Agreement negotiated by Operators and issue a record of decision, under R652-9-200. Upon the Director's approval of the Cooperative Agreement, the division shall be a signatory to the Cooperative Agreement.

(5) In addition to the Cooperative Agreement, an Operations Royalty Agreement executed by a Great Salt Lake Operator shall also contain terms and conditions consistent with Multiple Mineral Development and the purpose and intent of R652-20-2500.

(a) The Operations Royalty Agreement shall obligate the lessee to prevent Waste to the Common Source of Supply or Great Salt Lake Element or Mineral to be extracted and to prevent Waste regarding any Companion Element or Mineral extracted while also avoiding Waste to any Great Salt Lake Natural Resource.

(b) The Operations Royalty Agreement shall contain terms and conditions wherein the lessee agrees to preserve and conserve Great Salt Lake Mineral Resources and Great Salt Lake Natural Resources for future mineral extraction and mineral processing operations and to ensure ecological integrity and healthy salinity levels are also preserved and protected.

(c) The Operations Royalty Agreement shall also contain terms and conditions wherein the lessee represents and warrants full compliance, at lessee's sole expense, with all management decisions and instructions of the division and Director for preservation of Great Salt Lake's Mineral and Natural Resources.

(6) No Operator shall obstruct or interfere with the ability of another new or existing Operator from entering into a Cooperative Agreement.

R652-21-705. Multiple Mineral Development Conflict Resolution. If Operators continue to have disagreement or conflict after the conclusion of the mitigation plan, or issues remain regarding continued Negative Impacts to Biota or Chemistry due to continuing concurrent operations, the Operators shall pursue either binding arbitration or initiate a legal proceeding in a Court of competent jurisdiction.

R652-21-800. Operations Application.

R652-21-801. Purpose. The purpose of the Operations Application is to substantiate the information generated through the Feasibility Assessment and to determine the terms which will govern the proposed extraction or production of a nominated Great Salt Lake Element or Mineral.

R652-21-802. Submission. Applications to the division shall be submitted on the form provided by the division. All information collected by Operator and submitted in support of an Operations Application shall list the collection date of any submitted information.

R652-21-803. Discretion. The division has discretion to approve, deem incomplete, or deny any Operations Application. The division's approval of an Operations Application is required to obtain an Operations Royalty Agreement.

R652-21-804. Pre-Filing Meeting. An Operator shall request a pre-filing meeting with the division and with the Division of Water Quality at least thirty days prior to application for an Operations Royalty Agreement. The division and the Division of Water Quality may jointly waive or shorten the requirement for a pre-filing meeting request.

R652-21-805. Required Showings. Before the division and an Operator may enter into an Operations Royalty Agreement permitting the extraction of a nominated Great Salt Lake Element or Mineral, such Operator shall submit the following information in its Operations Application to the division:

(1) Applicant Information:

- (a) Legal name, permanent address, telephone number, and email address of the Operator;
- (b) Name and permanent address of the Operator's registered agent in the Utah;
- (c) Name, address, email address, and telephone number of the primary contact, including the person to whom requests for additional information should be addressed;
- (d) Signature of the Operator, signed by an officer of the corporation, if applicable; and
- (e) A description of the Operator's experience and knowledge predicated on the Operator's ability to commercially produce elements or minerals from the brines of Great Salt Lake;

(2) Proof of a Sampling Royalty Agreement;

(3) Operational Plan and Information:

- (a) A narrative description referencing maps or drawings, as necessary, of the proposed operations, including:
 - (i) Type of Great Salt Lake Element or Mineral to be extracted;
 - (ii) Type of operations to be conducted, including the type(s) of technology, and a description of how, including in what sequence, they are to be employed through all stages of operations;
 - (iii) Detailed information pertaining to chemicals used during the process, including a mass balance of constituents removed or added to GSL;
 - (iv) estimated dates when the activity may begin and end, and the date or dates when the withdrawals or discharges may take place;
 - (v) Estimated annual tonnages of Great Salt Lake Element or Mineral produced;

- (vi) Rate of extraction for the targeted and non-targeted minerals or elements and estimated rate of depletion of the targeted and non-targeted mineral or element in GSL;
 - (vii) A plan for Operator's mitigation of water used during operations, including a plan for measuring Returned Water and Mitigation Water;
 - (viii) A description of the handling and storage, including the proposed location and quantity, of Great Salt Lake Elements or Minerals and Operational Waste;
 - (ix) Estimated annual tonnages of Operational Waste to be produced;
 - (x) Surface use occupancy and ownership thereof, including a description of disturbed acreage and any infrastructure to be placed on Great Salt Lake sovereign land and upland development necessary for operations;
 - (xi) Proof of all pending or acquired water rights and related appropriations necessary for operations or a detailed plan demonstrating how the applicant will acquire water rights necessary to perform operations once in receipt of an Operations Royalty Agreement;
 - (xii) The anticipated operational recovery rate anticipated for the Great Salt Lake Element or Mineral;
 - (xiii) An approved plan for testing, monitoring, and recording all hydrologic inputs and outputs, including the Chemistry thereof, throughout operations, as well as an inspection plan;
- (b) A narrative description of the Operator's Commercial Viability for the Life of Mine, including both the method of evaluation and the data used in such evaluation, and an estimate of projected future revenue generated for the Life of Mine under an Operations Royalty Agreement;
- (c) Copies of any easements, permits, approvals, agreements, or other documents required for initiation of operations;
- (d) Copies of any executed agreements, contracts, options, and other financial arrangements entered into by the Operator and a third-party relating to operations;
- (5) Identification of the Royalty Rate Deduction the Operator desires to obtain and all data, information, reporting, and Self-Certification required for the division's analysis of such Royalty Rate Deduction;
- (6) Bonding and Reclamation.
- (a) Proof Bonding is in place with the division and the Division of Oil, Gas & Mining, if applicable;
 - (b) A reclamation plan negotiated with and approved by the division;

- (7) Evidence supporting Operator Certification of No Negative Impacts, under R652-21-806;
- (8) Proof of a Cooperative Agreement;
- (9) Self-Certification operations shall not violate Utah Code § 65A-6-1(3); and
- (10) Any other information the division or Director deems necessary to approve the application, including proprietary information regarding planned technology.

R652-21-806. Required Showings for Certification. An Operator filing an Operations Application shall include the following information:

- (1) A Self-Certification the proposed project will not Negatively Impact the Biota or Chemistry of Great Salt Lake;
- (2) A detailed plan for ensuring no Negative Impact to Biota and Chemistry;
- (3) Withdrawal information, including:
 - (a) Names of the waters where any withdrawals will occur, including the precise latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;
 - (b) Detailed information on the quantity of water withdrawn and depleted;
 - (c) Detailed information on the timing of the withdrawal;
- (4) Discharge information, including:
 - (a) Names of the waters where the discharges may occur, including the precise latitude and longitude to the fifth decimal place in decimal degrees and to the tenth of a degree in degrees-minutes-seconds notation;
 - (b) Sources, volume, and timing of the discharge;
 - (c) Characterization of the physical, chemical, biological, thermal, and other pertinent properties of the discharge; at a minimum: pH, total alkalinity, total dissolved solids, total suspended solids, sulfate, nitrate, nitrite, carbonate, bicarbonate, chloride, hydroxide, chemical oxygen demand, biological oxygen demand, silica, zinc, magnesium, sodium, calcium, potassium, boron, bromine, aluminum, iron, and silicon; range of temperatures expected in effluent; density range of effluent to be discharged; and quantity of foreign materials that would be discharged to the GSL on an annual basis;
- (5) A description of impacted habitat, including:
 - (a) Description of existing habitat and Biota potentially in and around area of operation, and
 - (b) Description of potential physical impact to habitat and Biota in and around area of discharge location;

- (6) Evidence supporting the operator certification, including:
- (a) An operator certification should consider both short term, localized effects and long term, ecosystem impacts of the project;
 - (b) Examples of evidence supporting a certification may include:
 - i. A quantitative comparison of influent and effluent volume and chemical composition;
 - ii. Modeled annual impacts to salinity or concentrations of other important chemical parameters in GSL;
 - iii. Evaluation of impacts to GSL Biota, including:
 - 1. A quantitative comparison of effluent chemical concentrations to applicable water quality standards; or
 - 2. Other scientifically defensible biological response thresholds;
 - iv. Other scientifically defensible means for evaluating project impacts on GSL chemistry and biota;
- (7) Additional information regarding any unique features of the project; and
- (8) Any other information as requested by the division.

R652-21-807. Surface Use Authorizations. Before the Division and Operator may enter into an Operations Royalty Agreement, an Operator shall obtain the necessary permits, easements, or other surface use authorizations required for Operations. An Operator is required to apply for a surface use authorization from the division for the extraction of Great Salt Lake Elements or Minerals if the Operator is proposing to utilize Great Salt Lake sovereign lands for evaporation ponds, dikes, pipelines, processing equipment or facilities, roads, or any other improvements or structures requiring surface use or disturbance.

R652-21-808. Additional Required Information. At any point during review of an Operations Application, the division or Director may request additional relevant information from the Applicant. To remain in consideration for an Operations Royalty Agreement, the Applicant shall provide such information within a reasonable time, specified by the division.

R652-21-809. Approval of Certification.

- (1) After receiving an Operations Application, the division shall confer with the Department of Environmental Quality in reviewing the Operations Application.
- (2) Before approving an Operations Application, the division shall review the Application and approve the Operator's certification supporting a finding:
 - (a) The operation will not Negatively Impact the Biota of Great Salt Lake;
 - (b) The operation will not Negatively Impact the Chemistry of Great Salt Lake;

(c) The operation is Commercially Viable.

(3) The division may contract with a third party to analyze any Application submitted. Applicants shall be responsible for any expense incurred as a result of or associated with this Certification.

(4) If the division cannot in good faith approve a certification of the above, within forty-five days of receiving the Operations Plan, the division shall notify the applicant and provide a list of missing information to supply.

(5) An Applicant may submit the additional missing information requested by the division within forty-five days of receipt of notice from the division. If the Operator does not provide the requested missing information to the division, the division shall deny the Operations Application, at which point the Operator may re-submit the Operations Application.

R652-21-810. Application Evaluation.

(1) Within sixty days of receiving an Operations Application, the division shall notify the Operator in writing of the status of the Operations Application. The division may:

- (a) Approve the Operations Application;
- (b) Deny the Operations Application;
- (c) Deem the Operations Application incomplete and provide the Applicant with a list of missing information, at which point an Applicant may re-submit.

R652-21-811. Multiple Applications.

(1) If the division is in receipt of more than one active Operations Application for extraction of the same Great Salt Lake Element or Mineral, the division shall first evaluate Operations Applications which:

- (a) Do not use Evaporative Technologies in any stage of the extractive process; and
- (b) Use Commercially Viable extractive processes.

R652-21-900. Required Terms – Operations Royalty Agreement.

R652-21-901. Operations Royalty Agreements shall contain provisions necessary to affect the purposes of these rules.

In addition to any other negotiated provisions, an Operations Royalty Agreement shall include the following terms and conditions:

Right to Extract. This Operations Royalty Agreement provides the right to extract the Great Salt Lake element or mineral suspended in brines of Great Salt Lake. This Operations Royalty Agreement does not give Operator the right to extract any Great Salt Lake element or mineral not explicitly referenced in the Agreement.

Rights Reserved to the Division as Lessor. The division expressly reserves the right to:

- (1) Lease or issue additional royalty agreements for the extraction of Great Salt Lake Elements or Minerals.
- (2) Alter or modify the quantity and rate of Great Salt Lake Operator's production upon invocation of the Emergency Trigger, pursuant to R652-21-1400.
- (3) Withdraw certain Great Salt Lake lands, methods of extraction, operations, or technologies upon invocation of the Emergency Trigger if the division finds these methods, operations, or technologies are directly causing or exacerbating the conditions creating the Emergency Trigger, defined under R652-21-1400.
- (4) Contract with a qualified third-party to audit and review Operator's reporting required by R652-21-1200.
- (5) Contract with a qualified third-party or government entity to monitor the Chemistry and composition of water and brine inputs and outputs and returned water.

Term. This Operations Royalty Agreement shall remain in effect, unless sooner terminated as herein provided, for a term of ten years commencing on the first day of the month following the execution date, and subject to any and all existing valid rights in said land, and shall automatically renew for consecutive terms, unless either party gives notice at least six months prior to the expiration of this Operations Royalty Agreement of their intent to terminate such agreement. The Final Royalty Rate may be renegotiated prior to the lapse of the final year of the term. This Operations Royalty Agreement shall not be held by production.

Royalties. Royalties shall be paid by Operator to the division pursuant to R652-21-1100.

Reporting. Within thirty days after the end of each fiscal quarter during the term of this Operations Royalty Agreement, Operator shall furnish to the division a report providing information required in R652-21-1200.

Cost Recovery. The division reserves the right to invoice and collect reimbursement from the Operator for the reasonable cost of independent monitoring, review and verification of information and/or inspection required to obtain and maintain an Operations Royalty Agreement.

Reassessment. The division reserves the right to review and adjust the royalty rate and terms of this Operations Royalty Agreement in the event of significant changes or unforeseen circumstances, including but not limited to, changes in market conditions significantly affecting the demand or pricing of the Great Salt Lake Element or Mineral; implementation of Emergent Technology; Negative Impacts to Great Salt Lake Chemistry or Biota caused by Operator; or the reaching of the Great Salt Lake Emergency Trigger, as defined in R652-21-1400.

Shut-in. For the State to obtain a full and fair return for its public trust assets, the Parties mutually agree that, when the sales price, as defined in R652-21-200, of the Great Salt Lake Element or Mineral falls below \$20,000 for more than two consecutive fiscal quarters, the

Operator shall cease and desist operations until market conditions improve. During the Shut-in period, the Operator's royalty obligations shall be suspended.

Change in Operations. If at any point an Operator adds or intends to add emerging technologies to their existing operation, such Operator shall notify the division. The division may require the Operator to submit any additional information required to evaluate such proposed Emergent Technology. If at any point an Operator adds or intends to add Evaporative Technologies to their existing operation, such Operator shall notify the division. The division may require the Operator to submit any additional information required to evaluate such proposed Evaporative Technology. Upon the occurrence of any such events, the division shall re-evaluate its approval of Operator's Certifications regarding Negative Impacts and adjust the royalty rate and terms of this Operations Royalty Agreement, as necessary.

Consent to Suit. Operator consents to suit in the courts of the State of Utah in any dispute arising under the terms of this Operations Royalty Agreement or as a result of operations carried on under this Operations Royalty Agreement. Operator agrees for itself, its heirs, successors, and assigns that any suit brought by Operator, its heirs, successors, or assigns concerning this Operations Royalty Agreement may be maintained only in the Utah State District Court in and for Salt Lake County.

Assignment. Operator shall not assign this Operations Royalty Agreement in whole or in part without obtaining the prior written consent of the division, which consent shall not be unreasonably withheld. Operator shall not be relieved of the responsibilities or liabilities assumed hereunder by virtue of any assignment to a third party unless the division provides written approval as provided herein, the third party is acceptable to the division as an Operator, and the third party assumes, in writing, all obligations of Operator under the terms of this Operations Royalty Agreement. Additionally, Operator shall notify the division of any material changes to Operator's corporate structure altering any contractual or financial obligation with the division within thirty days of the change.

Establishment of Water Rights. For the term of this Operations Royalty Agreement, the Operator shall maintain an approved and valid water right authorizing the Operator to divert and beneficially use water from Great Salt Lake for the purpose of extracting the Great Salt Lake Element or Mineral contemplated by this Agreement. This Agreement shall not be construed to relieve Operator from full compliance with Title 73 of the Utah Code, relative to the administration, appropriation, measurement, apportionment, or distribution of waters of the State of Utah.

Discovery of Other Minerals. In the event the Operator discovers other Great Salt Lake Elements or Minerals which can be extracted and produced economically (a "Discovered Mineral") during its operations under this Operations Royalty Agreement and wishes to produce those Great Salt Lake Elements or Minerals, the Operator shall, at the time of discovery, notify the division and obtain a separate royalty agreement for such Great Salt Lake Elements or Minerals.

Research and Development. This Operations Royalty Agreement shall give Operator the right to extract water or brine for the purpose of equipment design, evaluation, and calibration or to transfer such water or brine to a third party for the purposes of testing, research equipment design, evaluation, and calibration, but only if it is for the purposes of designing, commissioning, developing, or optimizing the extraction process that such Operator is currently implementing on Great Salt Lake.

Waste. The Operator shall conduct operations in a manner that avoids Waste, and maximizes the recovery and utilization, of commercially marketable Great Salt Lake Elements or Minerals. The Operator shall employ methods and techniques which promote maximum and efficient resource recovery, such as proper sorting, separation, stockpiling, and processing of element or mineral-bearing materials. Waste of a commercially marketable Companion Element or Mineral by any Great Salt Lake Operator is prohibited.

Indemnification. The Operator shall be liable for all damage incurred in connection with any activity undertaken or work authorized by this Agreement. The Operator shall indemnify and hold the division harmless against all liability, including attorney's fees, of any nature imposed upon, incurred by, or asserted against the division which in any way relate to or arise out of the activity or presence of the Operator, its servants, employees, agents, sublessees, assignees, or invitees.

Force Majeure. If either Party is prevented or delayed from completing any obligation under this Operations Royalty Agreement by a Force Majeure Event, as defined herein (the "Affected Obligation") except for the performance of any payment obligation that has accrued prior to the Force Majeure Event, the Affected Obligation shall be suspended and the affected Party shall not be deemed in default or liable for damages or subject to other remedies as a result thereof for so long as the affected Party is prevented or delayed from completing the Affected Obligation by the Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any matter (foreseeable or unforeseeable) not avoidable or overcome by the exercise of commercially reasonable diligence, and that is beyond the affected Party's reasonable control, including but not limited to: acts of God, any action after the date hereof by governmental authorities, other than the Division, that would prevent, delay, or make unlawful a Party's performance, suspension of activities to remedy or avoid an actual or alleged violation of environmental laws, fires, explosions, epidemics, unusually inclement weather, flood, drought, acts of war, insurrection, revolution, civil commotion, rights or terrorism, strikes, lock-outs or other labor disputes (including but not limited to strikes, lock-outs, or other labor disputes by the employees of direct or indirect contractors, suppliers, or agents of Operator); the Division's invocation of the Emergency Trigger, as defined in Utah Admin. Code R652-21-1400; inability to obtain necessary materials, power or other utilities or obtain permits, approvals, or consents from governmental authorities or private parties within a reasonable time; significant damage to, substantive destruction of, or unavoidable shutdown of necessary facilities or equipment.

Water Depletion and Emergent Technologies. The Operator agrees the division has the discretion and power to require an existing Operator to use Emergent Technologies to minimize water depletions caused by the current or planned mineral extraction as a condition of continued

operations. Before requiring an Operator to use any such Emergent Technologies, those technologies must (a) have been successfully implemented on a commercial scale in similar conditions and shown to be economically viable, and (b) be reasonably compatible with the Operator's overall extraction process. If Operator has existing operations to extract Great Salt Lake elements or minerals at the time of execution of this Agreement, Operator shall have a reasonable period of time, not to exceed five years, to implement emergent technologies which minimize water depletion. The Operator shall accurately report to the division the volume of brine depletion and any reductions in the volume of brine depletion.

To the extent Emergent Technologies are available to the Operator, the deployment of which would further minimize brine depletion, the Operator shall agree to obtain and deploy such Emergent Technologies.

Water Mitigation. If an Operator depletes water during operations, whether that water is extracted from Great Salt Lake or from an external source, the Operator shall mitigate such depletion pursuant to Utah Code § 65A-6-4(5)(a) (hereinafter referred to as "Mitigation Water"). It is the Operator's obligation to ensure the Mitigation Water is delivered to Great Salt Lake in the approximate location and quality where the depletion occurred. Prior to complying with such mitigation requirements, the Operator shall obtain discharge permits from the Department of Environmental Quality, if necessary.

Third Party Monitoring. The Division reserves the right to hire a qualified third-party to review, audit, or monitor Operator's ongoing reporting and data gathering methodology required by R652-21-1200. The Division also reserves the right to require the Operator to install and use monitoring equipment, paid for exclusively by the Operator, within the Operator's leased area. The Division may enter the Operator's leased area at any time.

Curtailment Framework and Emergency Trigger. The Parties agree, in the event the Emergency Trigger is reached, pursuant to R652-21-1400, the Operator shall temporarily curtail mineral production as directed by the division. The Parties agree curtailment will not automatically result in the termination of this Operations Royalty Agreement.

Subordination. The terms and conditions within this Agreement are subordinate and subject to the public trust doctrine and any management decision by the division when exercising its management authority and commensurate obligations with respect to sovereign lands.

Conditions for Material Breach. Actions amounting to a material breach of this Agreement include, but are not limited to, failure to provide ongoing reporting required by R652-21-1200, providing false or misleading information in required reports or certifications, failure to participate in an audit, or otherwise breaching a substantive obligation. Upon a finding of material breach, the division shall notify Operator of the breach. If the condition causing the material breach is not remedied or fully cured within thirty days of receipt of notice, the division shall issue a Cessation Order and rescind the Operations Royalty Agreement, at which time, and subject to the Operator's administrative and legal rights to seek review of such Cessation Order, the Operator shall immediately initiate any applicable reclamation activities.

Coordination and Incorporation of Cooperative Agreements. This Operations Royalty Agreement acknowledges and incorporates any term and condition negotiated in any fully executed Cooperative Agreement. However, to the extent there is a conflict, the terms and conditions of the Operations Royalty Agreement shall govern.

Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

R652-21-902. Term Conflict. To the extent there is a conflict between these rules and R652-20-3200(6) and R652-20-220, these rules govern.

R652-21-1000. Required Terms – Surface Use Authorizations.

R652-21-1001. Surface use authorizations, including but not limited to easements, special use lease agreements, or rights of entry, for the purpose of extracting Great Salt Lake Elements or Minerals from Great Salt Lake shall contain the following provisions:

Rights Reserved to the Division as Lessor. The Division expressly reserves the right to issue easements, leases, rights of entry, and other surface use authorizations as needed and use or otherwise manage the surface of Great Salt Lake sovereign lands pursuant to its obligations under the public trust.

Rental Adjustment. The Operator agrees the Division shall have the right to adjust the annual rentals at the end of the first ten-year period, and every ten years thereafter, as the Division shall deem reasonably necessary and that serves the best interest of the State.

Due Diligence. During the term of this Agreement, the Operator shall exercise due diligence in exploring and developing the entire subject area to identify, extract, process and maximize potential mineral resources. The Operator shall employ reasonable and prudent methods, techniques, and technologies to fulfill this obligation.

Sovereign Lands. This Agreement is expressly subject and subordinate to the right of the State of Utah to manage and control the bed of Great Salt Lake and is subject to the public trust. This Lease may be revoked at any time if necessary to fulfill public trust and statutory responsibilities.

Bonding. The Operator agrees that, for good cause shown, at any time during the term of this Lease, the Division may require the Operator to post with the Division a bond with an approved corporate surety company authorized to transact business in the State of Utah, or such other surety as may be acceptable to the Division, said bond to be conditioned upon full compliance with all terms and conditions of this lease and the rules relating hereto. The amount of this bond shall not be deemed to limit any liability of the Operator. The Division may, at any time during the term of this lease, require the Operator to increase the amount of an existing bond.

Reclamation Plan. Operator shall submit to the Division a plan for the reclamation of the subject area at least sixty days prior to any surface disturbance within the lease area. The Division must approve the reclamation plan prior to any surface disturbance and reserves the

right to request Operator amend the plan at any time during the term of the Agreement to ensure adequate reclamation and restoration of the subject area.

Removal of Fixtures and Reclamation. Upon termination of this Agreement for any reason, the Operator, upon payment of all amounts due to the Division, shall remove all property (including fixtures), machinery, equipment, and supplies at the Operator's sole cost and expense and shall reclaim the premises according to the terms of a Division-approved reclamation plan within a reasonable time, approved by the Division. The Division shall give at least thirty days' notice of such termination. The subject land shall be surrendered in good usable condition in as near the natural condition of the land as is reasonably practical. All physical improvements attached to the lands and not removed by the Operator shall become the property of the Division.

Lease Forfeiture. This Agreement may be forfeited in whole or in part due to failure to meet the due diligence requirements to utilize the entire subject area.

Hazardous Waste Response. In the event Operator's activities within the subject area cause the uncontained release of operational waste, as that term is defined in R652-21-200, within the subject area, Operator shall promptly notify the Division and comply with Department of Environmental Quality requirements for cleanup and remediation of the hazardous waste.

R652-21-1002. Term Conflict. To the extent there is a conflict between these rules and R652-20-3200(6) and R652-20-220, these rules govern.

R652-21-1100. Lithium Royalty Rate and Methodology.

R652-21-1101. Royalty Rate. Great Salt Lake Elements or Minerals require a separate royalty rate and structure, particularly when a Companion Element or Mineral is available for commercial production based on innovation or improved technologies.

R652-21-1102. Base Royalty Rate.

(1) Lithium Chloride and Unavailability of Post-Extraction or Processing Deductions. To provide a full and fair return to the state, as required by Utah Code § 65A-6-4(6)(a)(i), the division determines Lithium Chloride is not commercially marketable or fails to provide the full and fair return contemplated by Utah Code § 65A-6-4(6)(a)(i). In addition, any Operator desiring to produce or process Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide is not entitled to post-production deductions for any expended capital costs. The only Royalty Rate Deduction available to Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide is expressly designated in R652-21-1104, Royalty Rate Deduction.

(2) First Marketable Product. For all lithium related exploration, extraction, processing, production, and sales, the division determines Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide are the First Marketable Product to which the Base Royalty Rate attaches.

(3) Base Royalty Rate. Subject to a Royalty Rate Deduction as provided for in these rules, the Base Royalty Rate for Lithium Carbonate, Lithium Sulfate, and Lithium Hydroxide shall be 5%

of gross sale proceeds for each short ton of Lithium Carbonate extracted, produced, processed, and sold from Great Salt Lake water or brines.

(4) Final Royalty Rate and Variable Adjustments. After applying an applicable Royalty Rate Deduction and verifying the commitments made by an Operator to qualify for a Royalty Rate Deduction, the Final Royalty Rate set will be provided for in an Operations Royalty Agreement executed with the division as required before the production, processing, and sale of any Great Salt Lake Element or Mineral. However, the Final Royalty Rate is further subject to the Variable-Rate Royalty Adjustments provided in Utah Admin. Code R652-21-1106 of these rules.

R652-21-1103. Royalty Rate for Lithium Produced Exclusively through Secondary Recovery Processes.

(1) An Operator may submit a Secondary Recovery Royalty Application to the division demonstrating the Operator's Secondary Recovery Process:

- (a) Will, based on reasonable belief, produce a marketable product and
- (b) Will not use water or brine from Great Salt Lake, or any hydrological connection thereto, in the processing and production of a Great Salt Lake Element or Mineral and, therefore, has no Negative Impact to the Biota and Chemistry of Great Salt Lake.

(2) Upon approval of a Secondary Recovery Application, the division shall enter into a Secondary Recovery Royalty Agreement with the Operator. The royalty rate in a Secondary Recovery Royalty Agreement for lithium carbonate, lithium sulfate, or lithium hydroxide shall be the Non-Evaporative Royalty Rate. The Secondary Recovery Royalty Rate shall be variable.

R652-21-1104. Royalty Rate Deduction.

(1) Purpose. The division has been directed to incentivize Emergent Technologies, reduce Water Depletion for Great Salt Lake mineral operations, protect the ecological conditions and Biota of Great Salt Lake, protect and preserve salinity levels necessary for brine fly and shrimp production, and obtain a full and fair return on all minerals, elements, or ores owned by the state. These considerations are in addition to the public trust management responsibilities the division has with respect to management of sovereign lands. To accomplish these goals, the division is providing a financial incentive to Great Salt Lake Operators in the form of a reduced Base Royalty Rate if the stated goals are accomplished.

(2) Specified Royalty Rate Deduction. Any Operator that can verifiably demonstrate their operations utilize Non-Evaporative Technologies to produce a Great Salt Lake Element or Mineral shall receive a Royalty Rate Deduction of 2.5%, and is thus entitled to the Non-Evaporative Rate.

R652-21-1105. Proof Requirements to Perfect Royalty Rate Deductions.

(1) Feasibility Assessment. To qualify for the Royalty Rate Deduction, an Operator without an existing Operations Royalty Agreement shall:

(a) Notify the division, at the time of filing the Feasibility Application, the Operator intends to pursue the Royalty Rate Deduction; and

(b) Comply with each of the requirements specified in the rules governing Feasibility Applications.

(2) Operations Application. To qualify for the Royalty Rate Deduction, an Operator without an existing Operations Royalty Agreement shall submit any information, data, or other supporting materials to support a finding the operation will remain Commercially Viable and comply with each of the requirements specified in the rules governing Operations Applications.

(3) Operators in Production. To qualify for the Royalty Rate Deduction, an Operator with an existing Operations Royalty Agreement shall submit any information, data, or other supporting materials to support a finding the operation will remain Commercially Viable and comply with each of the requirements specified in the rules governing Operations Applications. The division may amend an Operations Royalty Agreement, at any time, upon a showing a Royalty Rate Deduction has been met.

R652-21-1106. Final Royalty Rate Shall be a Variable-Rate Royalty.

A Variable-Rate Royalty applicable to Lithium Carbonate, Lithium Sulfate, or Lithium Hydroxide shall be adjusted quarterly. The Variable-Rate Royalty schedule is as follows:

Average Sale Price	Final Royalty Rate	
	Base Rate	Non-Evaporative Rate
< \$20,000	5.0%	2.5%
\$20,000 – \$35,000	7.5%	5.0%
\$35,001 - \$45,000	12.5%	10.0%
\$45,001 - \$55,000	22.5%	20.0%
\$55,001 - \$65,000	25.0%	22.5%
> \$65,000	30.0%	27.5%

R652-21-1107. Execution of Operations Royalty Agreement. Within thirty days of approval of the Operations Application, the division and the Operator shall execute an Operations Royalty Agreement. The Royalty Agreement shall govern operations for the full term of the Operations Royalty Agreement.

R652-21-1108. Royalty Payment Deadlines and On-going Reporting and Site-Inspection Requirements.

(1) Payment Deadlines. Royalties due and owing under an Operations Royalty Agreement shall be paid to the State within thirty days of the end of each quarter of a fiscal year.

(2) Royalty Report. Each Operator shall attach a complete Royalty Report on a form authorized by the Division wherein the operator Self-Certifies the total amount of product extracted, produced, and sold during the applicable quarter, the price and Variable-Rate Royalty applied to the commodity sold during the quarter, all requirements necessary to justify the Royalty Rate

Deduction, if applicable, and any other information required by the division. Royalty reports shall be delivered to the division within thirty days of the end of each quarter of a fiscal year.

(3) Site Inspections. The division is authorized to conduct scheduled or random site-inspections on any of the Operator's facilities to ensure any metering devices are operational and functioning or perform any other task necessary to ensure Operator obligations are being met, the ecological integrity of Great Salt Lake is being preserved, or the Operator is not conducting operations which jeopardize the public, health and safety of the State's citizens.

R652-21-1200. Ongoing Reporting.

R652-21-1201. General Reporting.

(1) During the term of the Operations Royalty Agreement, an Operator shall report the following information to the division when submitting a Royalty Report:

- (a) The volume of the Great Salt Lake Element or Mineral produced, in short tons;
- (b) Self-Certification with supporting documentation establishing the Operator's continued Commercial Viability, including both the method of evaluation and the data used in such evaluation;
- (c) Actual recovery rate of the Great Salt Lake Element or Mineral produced;
- (d) Notification of planned surface disturbances within the lease or easement area prior to Operator undertaking such activity, if applicable;
- (e) The volume of Brine Water diverted into evaporation ponds;
- (f) The volume of Brine Depletion resulting from operations;
- (g) The volume of Mitigation Water delivered to Great Salt Lake and the location at which such Mitigation Water is delivered;
- (h) The volume of Returned Water returned to Great Salt Lake and the location at which such Returned Water is returned;
- (i) Evidence supporting ongoing Operations have no Negative Impact to Biota and Chemistry, including:
 - (i) Detailed information on the quantity of water withdrawn and depleted and on the timing of the withdrawal, as well as the point of withdrawal;
 - (ii) Detailed information on the sources, volume, and timing of discharges, as well as a characterization of the physical, chemical, biological, thermal, and other pertinent properties of the discharge; at a minimum: pH, total alkalinity, total dissolved solids, total suspended solids, sulfate, nitrate, nitrite, carbonate, bicarbonate, chloride, hydroxide, chemical oxygen demand, biological oxygen

demand, silica, zinc, magnesium, sodium, calcium, potassium, boron, bromine, aluminum, iron, and silicon; range of temperatures expected in effluent; density range of effluent to be discharged; and quantity and identification of foreign materials discharged to Great Salt Lake;

(iii) Detailed information on the amount and Chemistry of all substances added to during processing, as applicable;

(iv) Information on Operational Waste, including Operational Waste production, composition, methods of Operational Waste material disposal, and the management, placement, and disposal of Operational Waste;

(v) Description of habitat and Biota in and around area of operation or discharge impacted, if at all;

(v) Proof DEQ reporting requirements have been met; and

(j) Such other information the Division may require.

R652-21-1202. Royalty Rate Deduction Reporting. During the term of the Operations Royalty Agreement, an Operator, when submitting a Royalty Report, shall provide to the Division a Self-Certification demonstrating the use of Non-Evaporative Technologies to produce the Great Salt Lake Element or Mineral to ensure the Operator is entitled to the Royalty Rate Deduction:

R652-21-1203. Reporting Intervals. Within thirty days after the end of each fiscal quarter during the term of the Operations Royalty Agreement, an Operator shall furnish to the division a report providing the information required in R652-21-1201.

R652-21-1204. Other Reporting. An Operator shall notify the division of any changes to permitting or certifications from the Department of Environmental Quality. An Operator shall also notify the division of any changes to its water right(s) or point(s) of diversion during the term of the Operations Royalty Agreement. The Operator shall provide, within a commercially reasonable period of time, any other reporting of relevant information requested by the division to ensure compliance with the division's management responsibilities over sovereign lands or statutes and regulations specific to Great Salt Lake.

R652-21-1300. Inspection and Enforcement.

R652-21-1301. Enforcement Authority. Nothing in these rules shall be construed as eliminating any additional enforcement rights, remedies, or actions available under an Operations Royalty Agreement or state law.

R652-21-1302. Right of Entry.

(1) Division representatives may enter upon and through any Great Salt Lake Element or Mineral operation, whether at the Feasibility Assessment, operations, or reclamation stage.

- (2) Representatives of the division may inspect any monitoring equipment, water metering equipment, operations method or technology, or reclamation and have full access to and may copy any records required to be maintained by an Operator.
- (3) Representatives of the division may take samples from any stage of operations or area of operations during the Feasibility Assessment, operations, and reclamation stage.
- (4) When exercising a Right of Entry afforded under these regulations, a search warrant is not required, including when an inspection requires entry into a building or facility.
- (5) Division representatives may exercise these rights at commercially reasonable times, without advance notice, upon presentation of appropriate credentials.

R652-21-1303. Inspection Program.

- (1) The division shall conduct an average of at least two on-site inspections per year of each active or inactive Great Salt Lake Element or Mineral operation to ensure effective enforcement.
- (2) An inspection is an on-site review of an Operator's compliance with all permit, surface use, and Operations Royalty Agreement conditions and requirements imposed under these rules, within the entire area disturbed or affected by the Operator's operations.
- (3) The division may conduct an aerial inspection of any Great Salt Lake Element or Mineral operation. Aerial inspections will be conducted in a manner that reasonably ensures the identification and documentation of conditions at each operation, including adjacent conditions and operational input and discharge points. The division shall investigate any potential violation observed during an aerial inspection within three days with an on-site inspection.
- (4) The inspections allowed for under these rules shall also:
 - (a) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;
 - (b) Occur without prior notice to the Operator or any agent or employee of the Operator, except for necessary on-site meetings; and
 - (c) Include the prompt filings of inspection reports adequate to enforce the requirements of these rules and Utah Code § 65A-6-4.

R652-21-1304. Availability of Records.

- (1) Subject to applicable law, the division shall make available copies of all documents relating to applications for and approvals of existing, new, or revised Great Salt Lake Element or Mineral operations and all documents relating to inspection and enforcement actions.
- (2) Copies of all documents relating to Great Salt Lake Element or Mineral operations which the division classifies as public shall be made available to the public until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond.

(3) In preparation for any hearings or enforcement proceedings, the division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

R652-21-1305. Compliance Conference.

(1) A Great Salt Lake Operator may request an on-site compliance conference with an authorized representative of the division to review the compliance status of any condition, methodology, or practice proposed at any Great Salt Lake Element or Mineral Operation. Any such conference shall not constitute an inspection within the meaning of these rules or any applicable Operations approval.

(2) The division may, in its discretion, accept or deny any request to conduct a compliance conference.

(3) The authorized representative at any compliance conference will review such proposed conditions and practices to advise whether any such condition or practice may become a violation of any requirement of applicable statute, rule, contract, or Operations Royalty Agreement term or condition.

(4) Neither the holding of a compliance conference, nor any opinion given by the authorized representative of the division, shall affect:

- (a) Any rights or obligations of the division or the Operator with respect to any inspection, notice of violation, or cessation order, whether before or after the compliance conference; or
- (b) The validity of any notice of violation or cessation order issued with respect to any condition, methodology, or practice reviewed at the compliance conference.

R652-21-1306. Provisions of Division Enforcement.

(1) Notices of Violation.

(a) The division shall issue a notice of violation if, on the basis of a division inspection carried out during the enforcement of Utah Code § 65A-6-4, any rule promulgated under Utah Code § 65A-6-4, or monitoring the terms and conditions of an Operations Royalty Agreement, it finds a violation of any condition of operations which does not create an imminent danger or harm for which a Cessation Order must be issued.

(b) If the division determines there is a violation of a condition of operations that does not rise to the level of imminent danger or harm, the division shall issue a notice of violation to the Operator or its agent setting a reasonable time, not to exceed ninety days, for the abatement of the violation and providing an opportunity for a conference before the division.

(c) A notice of violation issued to an Operator shall be in writing, signed by an authorized representative of the division, and will set forth with specificity:

- (i) The nature of the violation;
- (ii) The remedial action required, which may include interim steps;
- (iii) A reasonable time for abatement, which may include time for accomplishment of interim steps; and
- (iv) A reasonable description of the portion of the Operator's operations to which the notice of violation applies.

(d) The division may provide the Operator an opportunity to discuss the remedial action and time for abatement. If, following any discussion, the Operator fails to meet any time set for abatement, fails to completely abate the violation, or fails to accomplish an interim step, the division shall issue a Cessation Order under R652-21-1306(3).

(e) The division shall terminate a notice of violation by written notice to the Great Salt Lake Operator when the division determines all violations listed in the notice of violation have been abated. Termination will not affect the right of the division to pursue any contractual remedies under an Operations Royalty Agreement.

(f) Any Notice of Violation may be challenged or appealed under applicable agency review or the Utah Administrative Procedures Act.

(2) Pattern of Violation.

(a) The Director may determine a pattern of violations exists or has existed, based upon two or more division inspections of an Operator's operations within a twelve-month period, after considering the circumstances, including:

- (i) The number of violations, cited on more than one occasion, of the same or related requirements of applicable statute, regulation, or contractual provision;
- (ii) The number of violations, cited on more than one occasion, of different requirements of applicable statute, regulation, or contractual provision; and
- (iii) The extent to which the violations were isolated departures from lawful conduct.

(b) If, after review, the Director or authorized delegate, determines a pattern of violations exists or has existed, and that each violation was caused by the Operator, the Director shall authorize or instruct the Attorney General's Office to initiate informal adjudicative proceedings under the Utah Administrative Procedures Act or initiate an action in a court of competent jurisdiction for the Operator to show cause why any applicable permit, lease, or Operations Royalty Agreement should not be cancelled, revoked, or rescinded.

(c) Any order resulting from an adjudicative proceeding may be challenged or appealed under the Utah Administrative Procedures Act.

(3) Cessation Orders.

(a) The division shall immediately order a cessation of operations if it finds, based on any division inspection, any violation of applicable statute, regulation, permit, or contractual provision, which:

- (i) Creates an imminent danger to the health or safety of the public; or
- (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, water resources, Biota, or the ecological health and integrity of Great Salt Lake; or

(b) Any mining or reclamation activity on Great Salt Lake conducted by any person or entity without a valid permit, lease, Operations Royalty Agreement, or Sampling Royalty Agreement constitutes a condition or practice which causes, or can reasonably be expected to cause, significant, imminent environmental harm to land, air or water resources, Biota, or the ecological health and integrity of Great Salt Lake.

(c) If the Cessation Order issued under R652-21-1306(3) will not completely abate the imminent danger or harm in the most expeditious manner possible, the division shall impose affirmative obligations on the person or entity to whom the Cessation Order is issued to immediately abate the violations. The resulting Order shall specify the time upon which the abatement will be accomplished.

(d) When a notice of violation has been issued under R652-21-1306(1) and the Operator fails to abate the violation within the abatement period, then the division shall immediately issue a Cessation Order. A Cessation Order issued will require the Operator to immediately take all steps the division deems necessary to abate the violations identified in the Cessation Order.

(e) A Cessation Order issued by the division shall be in writing, signed by the authorized representative of the division who issued it, and will set forth, with reasonable specificity:

- (i) The nature of the violation;
- (ii) The remedial action of affirmative obligation required, if any, including interim steps, if appropriate;
- (iii) The time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (iv) A reasonable description of the Great Salt Lake Operator's operations, or reclamation operations to which the Cessation Order applies.

(f) A Cessation Order issued by the division shall remain in effect until the violation has been completely abated or until the Cessation Order is vacated, modified or terminated in writing by the division.

(g) Any Cessation Order may be challenged or appealed under applicable agency review or the Utah Administrative Procedures Act.

(h) Reclamation operations and other activities intended to protect the public health, safety, and the environment shall continue during the period of the Cessation Order unless otherwise provided in the Cessation Order.

(4) Eminent Domain Proceedings. Pursuant to Utah law, the division is authorized to initiate eminent domain proceedings if the Emergency Trigger is reached and it becomes necessary, based on the state's police powers, to either:

(a) Reduce the size of any evaporative leasehold so as to reduce the depletion of Great Salt Lake waters or brines; or

(b) Terminate an Operator's operations and initiate reclamation activities if the Emergency Trigger extends beyond the two-year period provided under Utah Code § 65A-10-205(5).

R652-21-1400. Emergency Trigger Management.

R652-21-1401. Purpose and Authority. These rules are promulgated pursuant to Utah Code § 65A-10-204 requiring the division to make rules providing the procedures the division shall follow under the Emergency Trigger.

R652-21-1402. Authority. Under the Emergency Trigger, the division shall ensure the emergency management responsibilities in Utah Code § 65A-10-204 are met.

R652-21-1403. Trigger. If salinity concentrations fall below 90 g/L or exceed 150 g/L, measured and reported in accordance with best practices, as recommended by the Salinity Advisory Committee, the Salinity Advisory Committee may make a recommendation to the division the conditions necessary for reaching the Emergency Trigger have been met. The division may, upon consultation with the Great Salt Lake Commissioner, declare the conditions necessary for reaching the Emergency Trigger, stated in the immediately preceding sentence, have been met.

R652-21-1404. Duties of the Division.

(1) Upon reaching the Emergency Trigger, and if the division finds the following actions will directly contribute to improved ecological conditions required for healthy brine shrimp and brine fly reproduction:

(a) The division may, in its sole discretion, construct, operate, modify, and maintain the adaptive management berm and any additional berms, dikes, structures, or management systems, and such construction, operation, modification, and maintenance shall be consistent with Utah Code § 65A-10-204 and the public trust;

(b) The division may enter into agreements as necessary to provide for the construction of all or a portion of a berm, dike, system, or structure, if the division finds such agreements are consistent with the public trust;

- (c) The division may curtail mineral production for leases containing provisions contemplating curtailment or similar contractual remedies;
- (d) The division may, at its sole discretion, withdraw mineral leases over:
 - (i) Portions of Great Salt Lake,
 - (ii) Specific methods of extraction, or
 - (iii) Specific Great Salt Lake Elements and Minerals;
- (e) The division may, at its sole discretion, decline to issue a new permit, authorization, or agreement; and
- (f) The division may require Operators to implement Non-Depletive extraction methods, mitigate to offset Brine Depletion, or implement Innovative Technologies.

R652-21-1405. Record of Decision. Upon reaching the Emergency Trigger, a record of decision, as described in R652-9-200, summarizing the division's action and relevant facts shall be published on the division's website.

R652-21-1406. Third-Party Claims. The division is not liable for a third-party claim resulting from the division's management actions under the Emergency Trigger.

R652-21-1407. Emergency Trigger Termination. Upon consultation with the Great Salt Lake Commissioner and the Salinity Advisory Committee, the Director shall, upon twelve consecutive months of conditions that support a termination of the Emergency Trigger, declare the conditions necessary for termination of the Emergency Trigger have been met.

R652-21-1408. Force Majeure.

- (1) Upon reaching the Emergency Trigger, the division may invoke force majeure in contracts, mineral leases, and royalty agreements which contain such provisions.
 - (a) If force majeure is invoked, the parties to any Operations Royalty Agreement shall invoke the force majeure provisions within their respective agreements. The parties shall participate in an informal conference with the Director and any other affected Operators to arrive at a plan for the scope and duration of the cessation of operations caused by the Emergency Trigger. The division shall promptly waive force majeure once salinity conditions improve by declining below the Emergency Trigger threshold.
 - (b) If force majeure is invoked, the affected Operator is relieved from performance of any contractual provision requiring production to hold any Operations Royalty Agreement for a maximum of two years.
 - (c) If force majeure is invoked and the Emergency Trigger persists beyond two years, the division shall terminate the Operations Royalty Agreement and require the Operator to

engage in new contracts where the Operator represents and warrants future operations will not amount to a net depletion of water.

(d) If force majeure is invoked, an Operator may continue to process brines already extracted and may sell products derived from those brines.

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